

# NW

Norfolk and Western Railway Company  
Law Department  
Roanoke, Virginia 24042

RECORDATION NO. 13499-100 1400

FFB 8-1982-3 10 PM

INTERSTATE COMMERCE COMMISSION

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February 5, 1982 2-039A044

No. ...  
Date FEB 08 1982  
Fee \$50.00

ICC Washington, D. C.

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

Dear Mrs. Mergenovich:

In accordance with 49 U.S.C. § 11303 and the Commission's Rules, I submit herewith for recording with the Commission three counterparts, properly executed and acknowledged, of the document described below.

This document is a Conditional Sale Agreement, a primary document, dated as of November 3, 1981.

The names and addresses of the parties to the primary document are as follows:

VENDOR: Norfolk and Western Railway Company  
8 North Jefferson Street  
Roanoke, Virginia 24042

PURCHASER: Sprouse Creek Processing Company  
Labata  
West Virginia 25677

The equipment covered by the document is generally described as follows:

<u>Number of Units</u>	<u>General Description</u>	<u>AAR Symbol</u>	<u>Identifying Mark and Road Number</u>
1	800 h.p. EMD Diesel Electric Locomotive (Model SW-8)	B-B	NW 2107

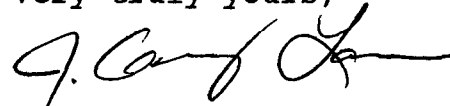
Mrs. Agatha L. Mergenovich  
Page 2

A fee of \$50 is enclosed. Please return two of the original counterparts, stamped with the Commission's recordation data to J. G. Lane, Law Department, Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, Virginia 24042.

A short summary of the document to appear in the index follows:

Conditional Sale Agreement between Norfolk and Western Railway Company, 8 North Jefferson St., Roanoke, Virginia, and Sprouse Creek Processing Company, Labata, West Virginia, dated November 3, 1981, and covering one (1) EMD Diesel Electric Locomotive, numbered NW 2107.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Gary Lane", written in a cursive style.

J. Gary Lane

w/JGL  
Enclosures

**Interstate Commerce Commission**

Washington, D.C. 20423

OFFICE OF THE SECRETARY

February 8, 1982

J. Gary Lane  
Law Department  
Norfolk & Western Railway Co.  
8 North Jefferson Street  
Roanoke, Virginia 24042

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **2/8/82** at **3:10PM**, and assigned re-recording number(s). **13499**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 13499  
FFB 8-1982-3 10 PM  
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

THIS CONDITIONAL SALE AGREEMENT, made and entered into on November 3, 1981, by and between NORFOLK AND WESTERN RAILWAY COMPANY, with its principal office at 8 North Jefferson Street, Roanoke, Virginia, a Virginia corporation ("Seller") and SPROUSE CREEK PROCESSING COMPANY, whose mailing address is Labata, West Virginia 25677 ("Buyer").

WITNESSETH, THAT:

WHEREAS, Seller owns a diesel locomotive more fully described in Section 1 below, which locomotive is no longer necessary or useful in connection with Seller's business as a common carrier and is presently leased to Buyer under a letter agreement dated October 11, 1977 (the "Existing Lease");

WHEREAS, Buyer desires to purchase from Seller said locomotive;

WHEREAS, Seller is willing to sell to Buyer said locomotive on the terms and conditions hereinafter set forth, reserving unto Seller the title thereto to secure payment of the purchase price thereof;

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sale of Equipment. Buyer agrees to purchase from Seller and Seller agrees to sell Buyer the property described below, hereinafter called the "Equipment":

Description: One (1) Diesel Electric Switching Locomotive bearing road number NW 2107 (AAR Designation B-B, built March 1952).

Make: EMD Diesel Electric Locomotive, 800 horsepower.

Model Number: SW-8.

2. Delivery. It is understood that the Equipment is, as of the date hereof, leased to the Buyer pursuant to the Existing Lease for use by the Buyer in intraplant service at Buyer's facility located at Labata, West Virginia. It is understood and agreed that the Equipment shall remain subject to the Existing Lease and all terms and provisions thereof (except the provisions as to payments to be made under the Existing Lease) until the Closing Date (as hereinafter defined). On the Closing Date (as hereinafter defined), the Equipment shall be deemed to be identified to this contract for sale, Seller shall deliver the Equipment and the Equipment shall be deemed to have been delivered pursuant to this agreement upon payment by Buyer to Seller of the down payment referred to in Section 3 below. On the Closing Date (as hereinafter defined), the Existing Lease shall be automatically cancelled and terminated as between the parties hereto. The Equipment will be deemed delivered f.o.b. the Seller's tracks at Labata, West Virginia. Notwithstanding anything to the contrary contained herein, the Seller shall have no obligation to deliver the Equipment hereunder and the Existing Lease shall continue in effect in accordance with its terms if there is filed by or against the Buyer a petition for reorganization or bankruptcy under the Bankruptcy Act, as now constituted or as may hereafter be amended.

3. Purchase Price and Payment. The total price of the Equipment shall be SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)

which shall be payable by Buyer to Seller as follows:

- (a) TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) down payment on the Closing Date (as hereinafter defined);
- (b) FIFTY THOUSAND DOLLARS (\$50,000.00) thereafter in two consecutive monthly installments, the first such installment being payable thirty (30) days after the Closing Date and the second such installment being payable sixty (60) days after the Closing Date. Each installment shall be in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

Seller shall not require payment by Buyer of any finance or service charges in connection with this sale. Buyer shall pay each installment by certified check or cashier's check mailed to Seller at the following address: Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, Virginia 24042, Attention: Mr. M. R. Driscoll, Material Management Department. With respect to all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, the Buyer will pay, to the extent legally enforceable, interest at the highest prime rate of interest of Morgan Guaranty Trust Company of New York in effect during the period of such delinquency.

The term "Closing Date" as used herein shall mean the date fixed by the Seller upon three (3) days' written notice to the Buyer, which date shall be after the date that this Agreement shall have been filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

After the Closing Date, the Buyer will pay promptly all taxes and assessments which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon the Seller solely by reason of its ownership

thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Seller or result in a lien upon the Equipment. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Seller directly and paid by the Seller, the Buyer shall reimburse the Seller upon presentation of an invoice therefor.

4. Title To The Equipment. The Seller shall and hereby does retain the full legal title and property in the Equipment until the Buyer shall have made all of the payments hereunder and shall have kept and performed all of its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer pursuant hereto. Any and all additions to the Equipment and any and all replacements of the Equipment and of the parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Seller shall have been paid the full indebtedness in respect of the purchase price of the Equipment, together with any interest thereon and all other payments required hereby, and all of the Buyer's obligations herein contained shall have been performed by the Buyer, all of the Seller's right, title and interest in the Equipment shall pass to and vest in the Buyer without further transfer or action on the part of Seller, except that the Seller, if requested by the Buyer,

will execute a quitclaim bill of sale of the Equipment transferring the Seller's title thereto to the Buyer.

5. Indemnity. Buyer shall indemnify and save harmless Seller, its officers, agents and employees, from liability and against all losses and claims, demands, payments, suits, actions, recoveries, legal expenses and judgments of every nature and description made, brought or recovered against Seller by reason of any act or omission of Buyer, its agents or employees, in connection with or arising in whole or in part, directly or indirectly, from the performance of obligations pursuant to this Agreement or the Buyer's use or operation of the Equipment, regardless of any negligence of the Seller.

6. Maintenance and Repair. The Buyer will at all times after the Closing Date maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense. Buyer hereby assumes the responsibility and risk of loss and damage with respect to the Equipment.

7. Identifying Marks. Buyer shall, promptly after the Closing Date, remove (at its sole cost and expense) any and all road initials and numbers, ownership markings or other markings or stencilling on the Equipment referring to "NW," "N&W," or "Norfolk and Western Railway Company."

8. Insurance. Buyer shall insure the Equipment with a company or companies acceptable to Seller against such casualties and in such amount as Seller shall require. The insurance shall be for the benefit of Buyer and Seller as their interests may appear. Seller is hereby authorized to collect from the insurance



company or companies any amount that may become due under any of such insurance, and the Seller may apply the same to the obligations hereby secured.

9. Protection of the Equipment. Buyer shall keep the Equipment free from any adverse security interests, liens or encumbrances and in as good order and repair as when received, shall not waste or destroy the Equipment or any part thereof, and shall not use the Equipment in violation of any applicable statute, ordinance or policy of insurance thereon, or in any manner inconsistent with the terms of the Agreement. Seller may examine and inspect the Equipment at any reasonable time or times, wherever located.

10. No Warranties. It is understood that the Equipment consists of used second-hand equipment and is sold as such. THE EQUIPMENT IS SOLD AS IS, WHERE IS, AND WITH ALL FAULTS. SELLER MAKES NO WARRANTIES RESPECTING THE EQUIPMENT, EXPRESS OR IMPLIED, OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. Seller neither assumes nor authorizes any person to assume for it any liability in connection with the conditional sale of the Equipment. It is further understood and agreed that, in no event, will Seller be liable for special, incidental or consequential damages of any kind.

11. Assignment. Buyer shall not sell, offer to sell, lease, encumber, transfer or otherwise dispose of the Equipment or any interest therein without Seller's prior written consent.

12. Reimbursement of Expenses. Seller may, in its discretion, discharge taxes, liens, or security interests or other

encumbrances at any time levied or placed on the Equipment, pay for insurance thereon, order and pay for the repair, maintenance and preservation thereof, and pay any necessary filing or recording fees. Buyer shall reimburse Seller on demand for any payment made or any expenses incurred by Seller pursuant to this authorization.

13. Default. In the event that any one or more of the following events of default shall occur and be continuing, namely:

- (a) the Buyer shall fail to pay in full any sum payable by it when payment thereof shall be due hereunder; or
- (b) the Buyer shall fail promptly to perform any of the obligations or covenants contained or referred to herein; or
- (c) any proceeding shall be commenced by or against the Buyer for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and all the obligations of the Buyer under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed for the Buyer or for its property in connection with any such proceedings; or
- (d) the Buyer, without the prior written consent of the Seller, shall make or suffer any sale, assignment, transfer or other disposition of any of its rights under this Agreement or the right of possession and use of the Equipment;

then at any time after the occurrence of such an event of default, Seller may, upon written notice to the Buyer, declare the entire indebtedness in respect of the purchase price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable without further demand. The Seller

shall thereupon be entitled to recover judgment for the entire unpaid balance of such indebtedness in respect of the purchase price of the Equipment so payable and to collect such judgment out of any property of the Buyer wherever situated.

14. Remedies. Upon the occurrence of an event of default hereunder, or at any time thereafter on such default not being cured, Seller at its option may declare all of the obligations immediately due and payable and shall then have all the remedies of a secured party under the Uniform Commercial Code of the Commonwealth of Virginia. Such remedies shall include, without limitation, the right to take possession of the Equipment, and for that purpose Seller may, insofar as Buyer can give authority therefor, enter the premises on which the Equipment may be situated and remove the Equipment therefrom. Seller may require Buyer to make the Equipment available to Seller at a place to be designated by Seller that is reasonably convenient to both parties. Any expenses of retaking, holding, preparing for sale, selling or the like shall include Seller's reasonable attorneys' fees and legal expenses.

15. Waiver. No waiver by Seller of any default shall be effective unless in writing, nor shall any such waiver operate as a waiver of any other default or of the same default on a future occasion.

16. Term of Agreement. This Agreement and the security interest in the Equipment created hereby shall terminate when all of Buyer's obligations have been paid in full and when Buyer shall have duly performed all covenants and conditions hereof.

17. Agreement and Amendment. No terms or conditions, other than those stated herein, no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions, shall be binding on either party unless hereafter made in writing stating that it is intended as a change to this Agreement and signed by an authorized representative of both parties. This Agreement embodies the entire understanding between the parties and all offerings, proposals, bids, negotiations, and representations, if any, made prior and with reference hereto are merged herein.

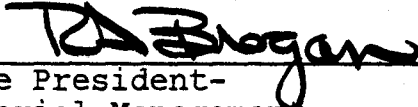
18. Governing Law. This Agreement shall be construed according to the applicable laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

Buyer acknowledges receipt of a copy of this instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day first written above.

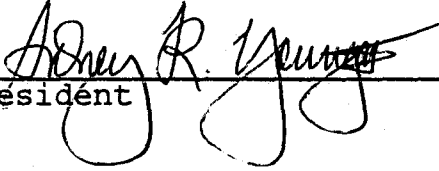
NORFOLK AND WESTERN RAILWAY COMPANY,  
Seller and Secured Party

By

  
Vice President-  
Material Management

SPROUSE CREEK PROCESSING COMPANY,  
Buyer and Debtor

By

  
President

[illegible]

I, \_\_\_\_\_, a Notary Public in and for the State and City aforesaid, do hereby certify that R. A. Brogan, Vice President - Material Management of Norfolk and Western Railway Company, whose name as such is signed to the foregoing document dated *November 3*, 1981, has this day personally appeared before me in my State and City aforesaid and acknowledged the same.

GIVEN under my hand this 7<sup>th</sup> day of January, 1982.

Lewis W. Russell  
Notary Public My Term Expires

**My Term Expires on the  
18th Day of May 1984**

My commission expires:

STATE OF WEST VIRGINIA )  
 ) to-wit:  
 )  
 )

County of <sup>OF</sup> *Mingo*  
I, *Irene S. Cochran*, a Notary Public in  
and for the State and *County* aforesaid, do hereby certify that  
*Sidney R. Young, Jr.*, President of Sprouse Creek  
Processing Company, whose name as such is signed to the foregoing  
document dated *November 3, —*, 1981, has this day  
personally appeared before me in my *County* and ~~City~~ <sup>State</sup> aforesaid  
and acknowledged the same.

GIVEN under my hand this 29<sup>th</sup> day of January, 1982.

Irene S. Cochrane  
Notary Public

My commission expires: June 9, 1991.